

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

MARK PETERSEN
Facility ID# 65666
Calhoun County, IA

ADMINISTRATIVE CONSENT ORDER
NO. 2008-AFO-13

TO: Mark Petersen
1003 200th Street
Sac City, IA 50583

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Mark Petersen for the purpose of resolving manure discharge violations at Mr. Petersen's facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Nate Young, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand, Gateway North, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

RECEIVED

MAY 01 2008

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MARK PETERSEN

III. STATEMENT OF FACTS

1. Mark Petersen owns and operates a small animal feeding operation located at 1003 200th Street in Sac City, Iowa (southwest quarter of section 19, Williams Township, Calhoun County, Iowa). The facility consists of one building of finishers.

2. On April 2, 2007, DNR Field Office 3 received an anonymous complaint alleging that Mr. Petersen was releasing manure from his facility into an adjacent field and also into the road ditch. In response to this complaint, Nate Young, DNR Field Office 3 environmental specialist, conducted an investigation of the facility. During the investigation, Mr. Young discovered manure from the facility had been pumped onto the ground in the field surrounding the facility. Manure was also standing in the roadside ditch between the facility and the road. In a phone conversation, Mr. Petersen informed Mr. Young that a water line broke and overflowed the pit. Rather than let manure run into the ditch, Mr. Petersen pumped it out onto the field until the manure could be properly applied. Mr. Young informed Mr. Petersen to notify DNR when there is a release so that they may advise him of proper application techniques.

3. On April 4, 2007, Mr. Petersen was issued a Notice of Violation letter for the manure release violations associated with the April 2, 2007 investigation. The letter informed Mr. Petersen that further releases may result in referral to DNR's legal department for enforcement action.

4. On November 2, 2007, DNR Field Office 3 received a complaint alleging that manure was running out of the confinement owned by Mr. Petersen and flowing into the road ditch. It was also alleged that there were dead hogs stacked at the site for three weeks.

5. On November 7, 2007, Mr. Young conducted an investigation of this complaint. During the investigation, Mr. Young confirmed that manure was leaving the facility and was ponding in the ditch area south of the confinement. Mr. Young also observed evidence of a previous release to the north. In addition, four dead hogs were also observed at the time. The hogs appeared to have been dead for more than 24 hours. Mr. Petersen was informed that the Iowa Code requires that all dead livestock be properly disposed of within 24 hours after death.

6. On November 14, 2007, Mr. Petersen was issued a Notice of Violation for manure release violations associated with the November 7, 2007 investigation. The letter also informed Mr. Petersen that these violations were being referred for further enforcement.

IV. CONCLUSIONS OF LAW

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MARK PETERSEN

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.2(3) states the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. On April 2, 2007, Mr. Young observed manure in the ditch near the facility, and on November 7, 2007, Mr. Young observed manure was overflowing out of Mr. Petersen's facility and ponding in the ditch area south of the confinement. Mr. Young also observed evidence of a previous release to the north. The above-facts indicate violations of this provision.

3. 567 IAC 65.2(9)"a" requires that a person storing manure from a confinement feeding operation who becomes aware of a release shall notify the DNR of occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. When Mr. Petersen failed to inform DNR of the April 2, 2007 manure release, he was informed that in the future he needed to notify DNR if a release occurs. However, Mr. Petersen once again failed to report the release of manure that led to the November 2, 2007 complaint and the November 7, 2007 investigation. The above-mentioned facts indicate violations of this provision.

4. 567 IAC 65.5 provides that the DNR may evaluate any animal-feeding operation to determine if manure from the operation: is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control; is causing or may reasonably be expected to cause pollution of a water of the state; is causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist, the operation is required, upon notification from the Department, to institute necessary remedial actions to eliminate the conditions. Based on the foregoing facts and conclusions, the DNR further concludes that one or more of the above-described conditions existed at this facility and Mr. Petersen is hereby notified that he must submit a Manure Management Plan as specified in V(3), below.

V. ORDER

THEREFORE, the DNR orders and Mr. Petersen agrees to do the following:

1. Retain all manure from the confinement facility between periods of application;
2. Properly apply all manure generated by the facility;
3. Complete and submit a Manure Management Plan (MMP) and all applicable fees to DNR Field Office 3 by May 2008;

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MARK PETERSEN

4. Properly dispose of all dead animals within 24 hours after death; and
5. Pay a penalty of \$4,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Failure to properly contain all manure has allowed Mr. Petersen to save time and money. Therefore, \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. When confinement manure is allowed to leave the facility and pond onto the ground there is an increased risk of runoff into a water of the state. Also, the manure can seep into groundwater and cause contamination. Mr. Petersen's failure to properly contain the manure and his failure to report the manure releases threaten the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Petersen has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Petersen had been notified in April 2007 that his failure to contain manure in a confinement and his failure to notify DNR of the releases constituted violations. Despite being informed about DNR's rules, Mr. Petersen committed the same violations in November 2007 when manure was released from his confinement and he did not report the release to DNR. Therefore, \$2,000.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MARK PETERSEN

This administrative consent order is entered into knowingly and with the consent of Mr. Petersen. For that reason Mr. Petersen waives his right to appeal this administrative consent order or any part thereof.

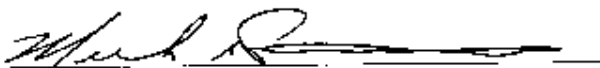
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
May, 2008.



MARK A. PETERSEN

Dated this 25 day of
April, 2008.

#No facility number; Kelli Book; Field Office 3; Gene Tinker; EPA; VIII.D.1.a